

21-7886

No. _____

FILED

APR 01 2022

OFFICE OF THE CLERK
SUPREME COURT U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

LEONA AND JAMES STACK — PETITIONER(S)
(Your Name)

vs.

MENARD, INC. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR SEVENTH CIRCUIT-CHICAGO,
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE) ILL.

PETITION FOR WRIT OF CERTIORARI

LEONA AND JAMES STACK
(Your Name)

3913 ARDMORE TRAIL
(Address)

SOUTH BEND, IN. 46628-1201
(City, State, Zip Code)

(574) 232-2428
(Phone Number)

QUESTION(S) PRESENTED

- (1) Did the “construal” by **United States Court of Appeals For The Seventh Circuit** in their **ORDER** of January 10, 2022 amount to a mis-construal by them in presuming the *Petition For En Banc Panel Rehearing by Appellants*, Leona and James Stack was a “motion to recall” court’s **MANDATE** of December 27, 2021?
- (2) Did the **ORDER** of December 16, 2021 by **United States Court of Appeals For The Seventh Circuit**, in its quick response to *Appellants’ Petition for Panel Rehearing* of December 11, 2021 provide reasonable explanation for its **DENIAL**?
- (3) Did the **FINAL JUDGMENT** of November 30, 2021 by **United States Court of Appeals For The Seventh Circuit**, which **AFFIRMED** the November 29, 2021 **ORDER** by that court of the decision by the lower **United States District Court For Northern District of Indiana, South Bend Division**, provide opportunity for oral argument by *Appellants*, Leona and James Stack?
- (4) Did the November 29, 2021 **ORDER** by **United States Court of Appeals For The Seventh Circuit**, by their “affirmation”, sustain the decision of the lower District Court while disregarding triable facts and evidence given them, and that were previously presented via *Appellants’ Response to Appellees’ Brief* (September 8, 2021), *Appellants’ Rule 10 - The Record on Appeal* (May 12, 2021) and, *Plaintiffs’ Appeal* (April 8, 2021)?
- (5) Did the **OPINION AND ORDER** of March 25, 2021 by **United States District Court For Northern Indiana, South Bend Division** relating to *Defendant’s Motion For Summary Judgment* of July 2, 2020 contain triable facts and evidence overlooked, misapprehended, or otherwise ruled inadmissible by the *Magistrate Judge*?
- (6) Did “outside influences” prevail in the March 25, 2021 **OPINION AND ORDER** by **United States District Court For Northern Indiana, South Bend Division** apparent reversal, without prior notification to *Plaintiffs* Leona and James Stack, of *Magistrate Judge’s* thirty-seven previous day **ORDER SETTING TRIAL DATE AND PRETRIAL CONFERENCE, AND WITH REFERENCE TO CONDUCT OF TRIAL**?
- (7) Did the fact that no request for “remand” back to **Superior Court of St. Joseph County of State of Indiana** was made within the “legal system” which may have played a role in allowing for ease of replacement of lawsuit originating attorney who ultimately abandoned our case, and for an expeditious settlement of original

\$125,000 demand?

- (8) Did a concerted effort by legal representatives of a "society of common ideological and academic affiliated" personalities exist as to avoid our cause and to deny us "due process", especially after the first two of the eleven we'd unsuccessfully contacted had voluntarily withdrawn, thereby contributing to the "special challenges" facing *Claimants, Plaintiffs, Appellants*, and current *Petitioners*, Leona and James Stack as they proceed *pro se*?

LIST OF PARTIES

(x) All parties appear in the caption of the case on the cover page.

() All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Leona and James Stack, *pro se*, v. Menard, Inc. – United States District Court of Northern District of Indiana, South Bend Division – Cause No. 3:19-cv-310-MGG, Judgment entered March 25, 2022.

* **Leona and James Stack, *pro se*, v. Menard, Inc. – St. Joseph Superior/Circuit Court (State of Indiana, St. Joseph County) – Cause No. 71D05-1903-CT-000106, moved to United States District Court of Northern Indiana approximately latter part of June, 2019.**

* (See Page 2 thru Page 4 of "Related Cases" for explanation of movement thru this court):

(Page 2 and 3) - Cause No. 71D05-1903-CT-000106, Complaint For Damages filed March 22, 2019 in the St. Joseph Superior/Circuit Court of St. Joseph County.

(Page 4) - Copy of subsequent Order (approximately early September, 2019) from United States District Court of Northern District of Indiana, South Bend Division setting Pretrial Conference date, and seeking "consent" from clients to transfer case to "magistrate judge".

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INDEX TO APPENDICES

APPENDIX A: (As instructed by letter from Ms. Walker of Office of Clerk, this also appears immediately following "Conclusion").

Case No. 21-1628, **ORDER** decided November 29, 2021 by **United States Court of Appeals For The Seventh Circuit, Chicago, IL** – (Cross reference with "Question(s) Presented", Question No. 4).

Case No. 21-1628, **FINAL JUDGMENT AFFIRMED** November 30. 2021 by **United States Court of Appeals For The Seventh Circuit, Chicago, IL** – (Cross reference with "Question(s) Presented", Question No. 3).

Case No. 21-1628, **NOTICE OF ISSUANCE OF MANDATE** December 27, 2021 by **United States Court of Appeals For The Seventh Circuit, Chicago, IL** – (Cross reference with "Question(s) Presented", Question No. 1).

Cause No. 3:19-cv-310-MGG, **OPINION AND ORDER** filed March 26, 2021 by **United States District Court Northern District of Indiana, South Bend Division** – (Cross reference with "Question(s) Presented", Question Nos. 5 and 6).

Appendix A

APPENDIX A: (Page 2)

Cause No. 3:19-cv-310-MGG, ORDER SETTING TRIAL DATE AND FINAL PRETRIAL CONFERENCE, AND WITH REFERENCE TO CONDUCT OF TRIAL filed February 18, 2021 by **United States District Court Northern District of Indiana, South Bend Division** – (Cross reference with “Question(s) Presented”, Question Nos. 5 and 6).

Case No. 21-1628, ORDER, “On consideration of the petition for rehearing”, dated December 16, 2021 by United States Court of Appeals For The Seventh Circuit, Chicago, IL – (Cross reference with “Question(s) Presented”, Question No. 2).

Case No. 21-1628, ORDER, on APPELLANTS PETITION FOR EN BANC PANEL REHEARING, dated January 10, 2022 by United States Court of Appeals For The Seventh Circuit, Chicago, IL – (Cross reference with “Question(s) Presented”, Question No. 1).

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER 1

NONE

STATUTES AND RULES

NONE

OTHER

NONE

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was NOVEMBER 29, 2021

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: DEC. 16, 2021 (Jan. 10, 2022) and a copy of the order denying rehearing appears at Appendix A.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment of The Constitution of The United States of America –
Section 1 states:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The question of “deprivation” of born citizens, and *Petitioners pro se*, Leona and husband, James Stack of property, without due process of law is the main issue put forward with this **Petition For Writ of Certiorari**.

STATEMENT OF THE CASE

On Nov. 7, 2018, Leona Stack accompanied by husband James Stack visited the Menard, Inc. store in Mishawaka, IN in order to do their monthly shopping at that particular location. After traversing several aisles within the store to make selective purchases, James Stack, with their solitary shopping cart, visited the bird feed aisle while Leona Stack walked beyond his line of sight to visit the Christmas display area in search of an appropriate door display - area approximately 20 feet away. Mr. Stack's shopping was interrupted by a distressed call of his name by his wife, Leona Stack. With shopping cart containing various purchases, James Stack hurried to a scene where he viewed Leona being helped by an unknown woman shopper to her feet after having tripped over what, after surveying the scene, appeared to be a recessed overlayment of 1/8"- 1/4" vinyl plank flooring in the aisle where when approached at an angle by Leona, whose attention had focused on a candy stick door ornament at the immediate end of that aisle, caused her to fall. In what appeared to be a pain induced traumatic state, Leona Stack stated that "*I tripped and fell over something.*" She contended that she never saw what she tripped over because she was in the process of reaching for the display item which she was interested in purchasing.

Immediate assistance was called for by James Stack for a manager in that Leona was in great pain, subsequently proven at the St. Joseph Regional Medical Center in Mishawaka, IN to be two fractures of her pelvis and a fractured right elbow. While awaiting the assistance of a store or department manager, Leona was able to stand only with the support of the shopping cart James Stack had brought with him. The woman who assisted her to her feet until Leona's husband arrived left the scene. It is unknown if the woman viewed her fall. It is also unknown if any security cameras were in the area that might have recorded her fall. During the time that a manager- name unknown - had arrived with a wheelchair, husband James Stack observed that there appeared to be a slight buckle (bulge) in the recessed vinyl plank material approximately at the point where her right foot came in contact with the overlayment of flooring. (Photos taken by Michael Stack, son of Leona and James Stack, the afternoon of the following day, Nov. 8, 2018, bear this out although it was never determined that the "buckle" was a cause of the trip fall incident or if the "buckle" was caused by Leona's right foot coming into contact with the recessed vinyl plank material). In either case, the cause of Leona Stack's trip-fall injuries was determined to be the unprotected edge of recessed overlayment of 1/8"-1/4" vinyl plank material - which the "buckle" was or became a part of - installed as a display item in a Christmas Holiday aisle, which was at a right angle to a main aisle of the Menard's Mishawaka Store, on Nov. 7, 2018. At no time did either Leona Stack nor husband James Stack observe any warnings of elevation change or any potential trip hazards being present in the Christmas Display area on Nov. 7, 2018. Neither were transition strips, notably

displayed in the Flooring Dept. of the Mishawaka, IN Menards Store, which might have been used to deter tripping, noticed to be present on Nov. 7, 2018.

Within 5-10 minutes after the approximate 1:25-1:40PM trip-fall incident occurred on Nov. 7, 2018 a manager arrived with a wheelchair. Leona Stack was asked if she wanted an ambulance to be called by the manager. Between Leona Stack and James Stack it was decided that they were within 5-10 minutes driving distance from Mishawaka's St. Joseph Regional Medical Center Emergency Room. They declined the ambulance and decided (by James Stack) to transport Leona via their private vehicle. Leona Stack was carefully placed in the wheelchair and wheeled to the store's Service Desk wherein an accident report was presumably to be taken. James Stack went to the "check-out" area to pay for their purchases; then, to collect Leona in order to wheel her out to the car with the assistance of the unknown manager. Leona Stack has but a vague recollection of what transpired while at the Service Desk at Menards of Mishawaka following her trip-fall incident owing to the pain and trauma she was suffering. She did not receive a copy of any incident report nor has clear recollection of having signed any such form. Somewhere during the process a business card carrying a claim number and the name Gallagher Bassett Services, Inc. was provided. Leona Stack arrived at the hospital at approximately 2:05-2:15PM on Nov. 7, 2018 from where James Stack immediately telephoned Gallagher Bassett Services to report the incident.

Leona Stack was taken directly to Emergency at the hospital. Subsequently, after a series of X-Rays were taken and treatment received, she was admitted to the hospital at approximately 10:00PM on Wednesday, Nov. 7, 2018 for a two night stay. Late in the afternoon of that day James Stack received a return cellphone call from a Ms. Monika Walker of Gallagher Bassett Services. He related to her what had transpired at Menards of Mishawaka earlier that day. James Stack also advised her that he'd seen a "slight buckle in whatever floor material edge" over which Leona Stack had tripped. The phone call was terminated shortly after additional particulars were given Ms. Walker. (Subsequent to this telephone conversation between James Stack, Plaintiff, and Monika Walker, Senior Resolution Manager at Gallagher Bassett Services, Inc, two letters, both by Ms. Walker directed and dated Nov. 19, 2018 to Leona Stack, Plaintiff and Claimant, and to Foley and Small LLP, plaintiffs' attorney at that time dated Nov. 26, 2018 were received. Both letters professed "negligence on both parties"). The following early afternoon, Nov. 8, 2018, James Stack accompanied by son, Michael Stack, returned to Menards of Mishawaka, IN in order to take photos of the trip-fall site and surrounding area.

Previously, on the day of the accident, Nov. 7, 2018, James Stack had expressed a desire to take some photos of the site, particularly since the vinyl plank flooring overlayment

was recessed from the main aisle and seemed to have questionable purpose. The manager who'd assisted Leona assured him that to photograph was O.K.; however, also stated that security cameras in various areas of the store should have recorded her trip-fall. To be on the safe side photos were taken by Michael Stack and witnessed by James Stack the following day on Nov. 8, 2018. It is important to note here that upon returning to the Christmas Display area of the store for photos, James Stack discovered that a "warning pylon" had, somewhere within the 24 hour period since the trip-fall incident, been placed in the area - however, in the aisle adjacent to where Leona had suffered her injuries, namely the "wrong aisle."

STATEMENT OF THE CASE (As relating to Page 1 of "Question(s) Presented", Nos. 4 & 5).

**To: UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

LEONA STACK, et al.,

(
)

Plaintiffs,

(
)

v.

(
)

CASE NO. 3:19-CV-310-MGG

(
)

MENARD, INC.,

(
)

Defendant

(

APPEAL

COMES NOW PLAINTIFFS LEONA STACK, *pro se*, and JAMES STACK, *pro se*, in order to file their APPEAL to the Court's "OPINION AND ORDER" of 25, March 2021 for reason that the Plaintiffs contend THERE ARE TRIABLE ISSUES OF FACT WHICH REMAIN FOR A JURY TO DECIDE.

INTRODUCTION

The Plaintiffs fully realize that it is not for the Court to have to "dig" for evidence previously submitted to both the Court and to the Defendant that may not have been properly explained by the Plaintiffs. – Plaintiffs Leona and James Stack, representing themselves for lack of being able to secure legal representation; and, being severely limited in their legal expertise concerning their cause have had to rely upon the cautionary latitude extended, *and fully appreciated*, them by the Court. – Within this "cautionary" period Plaintiffs have agonized through several periods of delay, at least two of which included extending "teleconferences" over nearly a five month period. - Particularly, we now refer to a Court ordered Sept. 10, 2020 "teleconference" during which time Magistrate Judge Gotsch, informed the parties to the "teleconference" that he was desirous of having additional time to "review the entire case." Though exasperated by further delay until December, 2020, Plaintiffs were encouraged that a "review" was to take place. Meanwhile several more fruitless attempts were made by the *pro se* Plaintiffs to secure legal representation. - It appeared as if the pending Defendant's "Summary Judgment Motion" ruling hanging over Plaintiffs' heads at that time was the "poison pill" reluctant for any attorney to swallow.

This being offered as an "introduction" as to what we believe to be the succeeding correct rationale in pursuit of a favorable Court response to our **APPEAL**, we will proceed with additional explanation of Plaintiffs' July 27th, 2020 filing of **NON-MOVANT RESPONSE, IN ACCORDANCE WITH FED. RULE CIV. PROC. SUMMARY JUDGMENT 56 AND LOCAL RULE 56-1, TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** (filed with the Court on July 2, 2020).

NON-MOVANT RESPONSE SUBMISSIONS OF FACTS AND SUPPORTING EVIDENCE

(Taken from evidentiary copies enclosed with Plaintiffs' **NON-MOVANT RESPONSE** to both Court and to Defendant, Menard, Inc. Counsel)

(1) Statements from the then enclosed "Notarized and Plaintiff signed Affidavit":

- "after having tripped over what - after surveying the scene - appeared to be a recessed overlayment of 1/8" - 1/4" vinyl plank flooring in the aisle where; when approached at an angle by Leona, whose attention had focused on a candy stick door ornament at the immediate end of that aisle, caused her to fall."

- "In either case, the cause of Leona Stack's trip-fall injuries was determined to be the

unprotected edge of recessed overlayment of 1/8" - 1/4" vinyl plank material (which the "buckle" was, or became a part of) installed as a display item in a Christmas Holiday aisle, which was at a right angle to a main aisle of the Menard's Mishawaka Store, on Nov. 7, 2018.

(2) Statement from the then enclosed "From Plaintiff, Leona Stack, Interrogatories answers submitted Nov. 18, 2019" (From Question No. 3 relative to nature of what was the alleged cause of Plaintiff Leona Stack's "trip-fall" incident. - The identical written response by Plaintiff later appeared in the taking of her deposition on June 4, 2020. The deposed was then responding to a question posed by Counsel for Defendant, Menard, Inc.):

- **ANSWER:** "Vinyl Plank elevated approx. 1/8" - 1/4" above floor approx. 5 ft. wide and recessed 3-4 inches from main aisle - (photo enclosed)."

(3) Statement from the then enclosed "From Plaintiff, James Stack, Interrogatories answers submitted Nov. 18, 2019" (From Question No. 27 relative to description of how accident occurred):

- **ANSWER:** "(See enclosed photo of area of trip/fall. Photo was taken approximately 24 hours after incident. Photo annotated with details of accident (trip/fall) - Details of trip/fall incident orally transmitted to Monika Walker of Gallagher Bassett on 11-07-18 at approximately 6:00-7:00 PM by James Stack, Husband."

(4) Statements taken from the then enclosed "From Defendant, Menard, Inc. Interrogatories answers submitted Feb. 18, 2020" (Areas of evidential significance have been underlined by Plaintiffs)."

- **QUESTION NO. 8:** "What was the purpose of the overlayment of what appeared to be vinyl plank in that particular area (Christmas Display area)? - were there other areas in the store that had similarly placed overlayments of vinyl plank materials? If so or not, what made the area of trip-fall special?" - **ANSWER:** "The vinyl plank flooring was installed for display purposes. There are not any similarly placed overlayments of vinyl plank in the

Hardware department."

- QUESTION NO. 6: "Was Merchandising direction in affect? - Was a planogram in use to complete any seasonal set? - Does the store in which the trip-fall occurred follow a corporate wide uniform display direction? - Do local stores have the O.K. to "tweak" home office display direction?" - **ANSWER:** "Objection. Interrogatory number 6 is vague and ambiguous as to "merchandising direction" and open to interpretation. A planogram was not used. The Mishawaka store followed the corporate installation directions. Local stores are not allowed to deviate from design plans provided by the corporate office. Map and Detail Pages of the area will be disclosed upon entry of a stipulated Protective order."

- QUESTION NO. 11: "By whose direction was the overlayment installed? - Why was the installation of what appeared to be vinyl plank overlayment on side aisles recessed several inches from the main aisle? - Was sufficient "line of sight" visual opportunity considered from all angles of approach?" - **ANSWER:** "The Menard, Inc. corporate office. If set to plan, the vinyl planking is not RECESSED and lines up with the main aisle."

- QUESTION NO. 15: "Are there other display areas nearby where the trip-fall took place that are overlayed with material other than vinyl plank, such as carpeting, area rugs, etc. of a similar thickness to the vinyl plank in question? - If so, are they protected by safety strips (such as transition strips)? - and if they are, what makes them unique from the unprotected vinyl strip material?" - **ANSWER:** "There is carpeting in the display showroom under the mezzanine approximately 6 feet away from the vinyl plank, and two carpeted promotional squares about 6 feet in front of the vinyl plank display area. The carpeting has a rubber trim installed around the perimeter."

(5) Excerpts from "Letter dated Dec. 18, 2019 from Plaintiffs *pro se*, Leona and James Stack, to all case parties involved, which detailed object of cause of "trip-fall" claim and "negligence" by Defendant, Menard, Inc. - Significant areas underlined. (This letter later became the subject of a demand that we not again directly contact parties connected to the Defendant, nor to the Defendant themselves. - The demand was made by Defendant Counsel, Jane Callies, later to be agreed to by Plaintiffs in keeping with what they thought to be "good faith" and proper legal ethical procedure):

- "Several months ago, on Nov. 7, 2018, Leona Stack suffered a 'trip-fall' incident at your

Menards Store in Mishawaka, IN. She tripped while approaching an attractive 'peppermint stick' door ornament upon which her attention was focused. What caused her to trip was an over-layment of the floor surface in the store's Christmas Display Dept. with an approximate 1/8" thick 'vinyl plank.' The plank had been installed as recessed approximately 4" from a main store aisle so as to form a short display aisle of approximately four and 1/2 to 5 foot width. The recessed edge of the 'vinyl plank' was fully exposed without the benefit of a 'transition strip', or warning of elevation change which would imply caution or potential 'trip hazard'.

- The enclosed photos show both - 1.) that the 4" recess of the 'vinyl plank' minimized the claimant's opportunity to recognize a potential trip hazard when approached, not directly, but from an angle wherein she favored the right side if the main aisle as she walked toward, and focused, on the 'peppermint stick' door display hanging approximately 36-40" above the floor surface - and at the end of the short display aisle. - 2.) that there appears to be a slight buckle in the 'vinyl plank' over-layment close to where the claimant's right foot came in contact with the exposed edge of the 'vinyl plank.' This 'buckle' was reported to Ms. Monika Walker Senior Investigator for Gallagher-Bassett the same afternoon of Leona Stack's injury."

Albeit a Court extension of the "teleconference" of September 10, 2020 was made in order that a "review" of the case could be made by the Court, Plaintiffs Leona and James Stack find absolutely no "investigative reference" to the "recess installation" as a potential cause of the trip-fall "vinyl plank" material in this Court's latest "Opinion and Order." - Likewise, we have received no response from the Defense parties previously contacted relating to the same matter of "recess installation." - Other than what Defendant Counsel advised as "appropriate answers" given by Defendant in their Interrogatory response relating to the "recess installation", the Defendant has studiously avoided the subject in their entire presentation of material constituting their filing of "Motion for Summary Judgment" on July 2, 2020.

At this juncture, Plaintiffs Leona and James Stack again remind both Defendant, Menard, Inc. and the Court that they have no issue with the use of the "vinyl plank" material by Menard, Inc. in that it appears as if the material in question is within thickness safety standards for installation.

Plaintiffs' issue is with the method of "recessed installation" which impeded the view

of Leona Stack as she approached from an indirect angle the "recessed" vinyl plank overlayment of flooring, a flooring never foot traveled upon by her; only to have been tripped by and to have fallen upon. - Plaintiffs regard the Menard corporate prohibited deviation in installation from corporate direction as evidence of neglect, and failure of the local Mishawaka Menard Store to properly protect their customer. - The fact is that by "recessing" the vinyl plank material from a main store aisle, Menard's actually created a safety hazard.

(6) Statements taken from the then enclosed "From Plaintiff, Leona Stack, 'verified and validated' Deposition taken on June 4, 2020. ('Verification and validation' by Plaintiff, Leona Stack, was made subsequent to the filing by Defendant Counsel of their "Motion For Summary Judgment" in which yet to be verified and validated information was presented as evidence by the Defendant:

(From Page 28, Line 14-15, by Defendant Counsel Jane Callies , of Leona Stack Deposition of June 4, 2020) - Q. Is it fair to say that you were not looking where you were walking? - (From Lines 16-23 wherein objection was made to question unanswerable with simple "Yes" or "No") - "MR. STACK: I object to that. Answer the question. - MS. CALLIES: For the record, you can state the basis of your objection, but you go ahead. Well, for the record, it's inappropriate to be making -- for a non-attorney to be making an objection, but Lee, you can go ahead and answer the question. - (The question was then re-stated by MS. CALLIES) - Lee, were you looking where you were walking? - (Line 9-10, Page 29 reply by Leona Stack) - A. I was looking at the thing hanging there on the wall. - (Lines 11-13, page 29) Q. All right. Were you looking at the floor where you were about to step? A. No, I did not look at the floor.

From that point forward, and at spaced intervals designed to cause Plaintiff, Leona Stack to possibly alter her responses, Defendant Counsel asked no less than ten questions concerning "the floor." - (The presumption therein being made that "the floor" represented the display area of "vinyl plank" overlayment, as it had already been ascertained that Leona Stack was well aware of the main aisle flooring as she moved at an angle toward the intersection of visually impeded recessed "vinyl floor" material and straight line main aisle flooring). - Each of the strategically placed questions by Defense Counsel relating to "the floor" were replied to by the Plaintiff, Leona Stack, in a consistent manner that she did not see nor inspect the "the floor" before, during, or

after her trip-fall incident of Nov. 7, 2018. - Again, her only physical contact with "the floor" came when she tripped on its unprotected and elevation change unidentified edge to land with traumatic force onto "the floor."

Beginning with Line 8, Page 90 of Deposition of Leona Stack, June 4, 2020 through Line 10, Page 110; and, beginning with Line 6, Page 114 through Line 19, Page 116 was represented "Cross-Examination" and "Recross Examination" by Plaintiff, representing *pro se* for Leona Stack, James Stack. - Other than to "go on record" to protest the representation of James Stack as *pro se* Counsel during the Deposition taking of Leona Stack, the Counsel for Defendant chose to ignore any of the testimony made by either Deponent Leona Stack or her *pro se* "cross examiner" James Stack in her filings with the Court as to actual "Motion For Summary Judgment" and reasons therefore.

- (Lines 25, Page 93 thru Lines 1-16, Page 94) Q. All right. Now, what -- when you proceeded toward the aisle in which you saw the Christmas decoration hanging, how did you proceed toward it; at a direct route or at an angle? - A. At an angle. I was in the main aisle. - Q. Would you say you were close in the main aisle and that decoration was at exact --. A. Right on the end. - Q. Right on the very end of the aisle. What was -- were you at any time looking at the floor as you were, or were you looking at the decoration? - A. I was looking at the decoration. - Q. Did you see any change in elevation -- A. No. - Q. -- in the floor? - A. No, because I wasn't looking at the floor.

- (Lines 19-25, Page 97 thru Lines 1-9, Page 98) Q. All right. Then you proceeded to the hospital. Would you say at any time between the time that you fell and got up that you realized, or that you had seen what caused your fall? - A. No. - Q. Did you see what caused your fall? - A. No. I did not. - Q. Did you at any time see any kind of warning that would warn you of a change in elevation -- A. No. - Q. -- or anything? Was there anything in that aisle that would say, or any other aisle -- A. No. - Q. -- that would indicate that there was a possible, potential trip hazard? - A. There was nothing that I saw.

(7) Statements taken from the actual (not previously enclosed) Deposition of Plaintiff, James Stack immediately following the Deposition of Plaintiff, Leona Stack, on June 4, 2020. (As in the case of Leona Stack, in which Deposition was taken within 24 hours subsequent to the filing by Defendant of "Motion For Summary Judgment" in which - yet to be verified and validated information by Plaintiff - was presented as evidence by the

301" d. by the no. 1s/levia ving. 12. 8105 , 8. vo 4 to theblii lEi-ghis en ihs
Defendant (Significant evidence underlined)

- Lines 22-25, Page 8 thru Lines 1-25, Page 9 and Lines 1-7, Page 10 - Q. All right. So it's a photo and there are notes all over it. First of all, did you take the photo? - A. It was taken by Michael Stack, my son. - Q. So the answer is no, you did not take that photo?

A. Yes. - Q. Does - when was this photo taken? - A. It was taken on November 8, 2018 at approximately, I am going to say mid-afternoon. - Q. Does this photo accurately

reflect the scene as it appeared at the time of Leona's accident on November 7, 2018?

A. Yes, it does with - Q. Okay. - A. No, I will amend that. With the exception that there

has been a pylon added that was not there at the time of her accident. - Q. All right. Do you have a copy of this picture that does not have notations and notes written all over

it? - A. Yes. - Q. In other words, do you have a clean copy of this photo? - A. Yes. - Q. Can you provide that to me, please. - A. Yes. I can't, but from my son I can. - Q. You can get a

copy of it though, right? - A. Yes. - Q. And you have my contact information to send it to me, correct? - A. Yes. - Q. -

(8) Statements taken from the then enclosed Letter, dated April 23, 2019 received by Plaintiff, Leona Stack, trip-fall incident of Nov. 7, 2018. - (Mr. Hick's letter was in response to a request of April 17, 2019 from Daniel Pfeifer wherein Mr. Pfeifer had enclosed photos of the trip-fall area where Leona Stack had suffered serious injury, and a sample of the "vinyl flooring" upon which she had fallen after tripping on the unprotected edge of the material - **Significant areas underlined**):

- "I have reviewed the materials you sent relative to Mrs. Stack's November 7, 2018 fall, at a Menards store in which she tripped on the vertical edge of some temporary flooring (Mohawk Home Expressions floating vinyl plank)."

- "The temporary flooring had been placed over the regular tile floor in Christmas display aisles. While the temporary flooring provided a different colored floor surface in the Christmas display aisles, it would not seem that it served any necessary function.

- "The temporary flooring used is typically used to cover entire rooms. **There are**

edge/transition pieces available that might reduce the possibility of tripping on the edge.

- Anything in a pedestrian area and that can restrict and interfere with the movement of a pedestrian's foot is a trip hazard. A fundamental concept of safety is:

1. Do not create a hazard (or, eliminate the hazard)
2. If a hazard must be created, or cannot be eliminated, then guard against the hazard.
3. If a hazard must be created or cannot be eliminated, and it can't be guarded, then provide effective warnings against the hazard.

- It is my understanding that no warning cone was provided until after Mrs. Stack's fall.

When taken in concert with the explanation of evidence herein provided by Plaintiffs Leona and James Stack and elaborated upon in the labeled "Items 1 thru 4", particularly "Item 4" Interrogatory Responses by Defendant, Mr. Hick's expertise in Investigation (solicited and paid for by Attorney, Daniel Pfeifer) is valuable in sustaining Plaintiffs' contention that "triable evidence exists" that warrants a jury review and subsequent decision thereof. - Particular attention should be given to the "three fundamental concepts of safety" wherein Menard, Inc. actually created a hazard by their corporate unauthorized "recessed installation" of the "vinyl plank" overlayment of flooring; thence to neglect to guard against or "warn" of the hazard they'd created.

As to the placement of a warning cone within 24 hours of Leona Stack's trip-fall; fully noted in Plaintiff James Stack's "Item 7" Deposition response; in "Notarized Plaintiff Signed Affidavit"; and, in Mr. Hick's letter of April 23, 2019 - the question begs to be answered, "Why, if but to acknowledge the existence of a safety hazard that caused injury to a customer (Leona Stack) scant hours before, would Menards of Mishawaka have placed a warning cone (albeit hastily placed in the wrong aisle) in their Christmas Display area?? - Are Plaintiffs Leona and James Stack to be denied due process of being able to ask this question of Menard Management by the Court's dismissal of their case??

Plaintiffs need also call attention to an erroneous statement appearing on Page 15 of the Court's "Opinion and Order" of March 25, 2021 under topical heading "Professional Engineer Letter" - (second paragraph of Page 15) - *however, in the aisle adjacent to where Leona had suffered her injuries, names the wrong aisle.* - The proper

word, as appears in our "affidavit", should be namely.

(9) Court's ruling regarding "Letters dated Nov. 19th and Nov. 26, 2018 from Monika Walker, Senior Resolution Manager, Gallagher Bassett Services, Inc:

Plaintiffs find the Court's ruling as to the inadmissibility of Ms. Walker's letters that indicated she "found negligence on both parties" to be baffling. Citing the Court's "opinion" as seen on Page 12, Paragraph One, under topical heading "Claims Administrator Letters" - "Ms. Walker indicated in both letters that she 'found negligence on both parties.' [DE48-1 at 23-24]. She further stated that Mrs. Stack was barred from recovery because of Indiana's comparative negligence standards [id]. The Stack's cite to Ms. Walker's letters as evidence that Menard was negligent. However, Ms. Walker's letters are inadmissible hearsay that must be disregarded here." - The presumption by the Court is that Plaintiffs cite her letters as being "offered to prove the truth of the matter asserted." - This was not the intent of the Plaintiffs so much as that they were attempting to "dis-prove" that Plaintiff, Leona Stack, was in any way "negligent" and hoped that this might be left for a jury to decide. - Being ignorant as to the circumstances that resulted in the movement of our case from Superior Court to District Court, and that it may have been possible for our attorney to seek "remand" back to Superior Court wherein Plaintiff, Leona Stack would have had the opportunity to view whatever fabricated evidence pointing toward her "negligence"; more importantly, to which she might respond in front of a jury, now results in the denial to her of "due process."

The stigma left by the Court's decision that, "Hearsay evidence is inadmissible on summary judgment to the same extent as it would be at trial", coupled with the totally unsubstantiated claim by an "investigative asset" of the Defendant has had a profound negative effect on Mrs. Stack's health, both physical and mental, since the now twenty-nine month old ordeal began. - Plaintiffs strongly disagree that Ms. Walker's letters constitute "hearsay" as the Court interprets it.

(10) Failed Mediation of July 3, 2020 and Plaintiffs Motion For Relief From Cost of Mediation:

Plaintiffs will honor their contractual commitment with Michael Scopelitis. We will

attempt to set up a payment schedule with him within the next seven days (from April 7, 2021) and hope to pay off our obligation within the next 12 months.

Plaintiffs Leona and James Stack would be derelict in not maintaining that the entire Mediation procedure was a "sham" with the sole purpose of the Defendant being to demonstrate to the Court their "willingness" to abide to the Court's encouragment for "settlement" as opposed to jury trial. - It's to the Defendant's convenience that "mediation" proceedings are not admissible in Court; however, being that this recent "Opinion and Order" contains statements relating to the "failed mediation", with specific reference to Court statements found under topical heading "Plaintiffs' Motion For Relief From Cost of Mediation [DE 43], Plaintiffs' comment is invited" - i.e. "The Stack's arguments here are misplaced. Menard's participated in the mediation as this Court encouraged.[See DE13 at 2]. Menards followed the order of this Court to have a representative with sufficient settlement authority attend the mediation.[See DE 13 at 2]. - Plaintiffs dispute the "introduction" by the Defense Counsel, Jane Callies, of a mediation attending "health representative" (name unknown) as a person "with sufficient settlement authority." Plaintiffs also question the following statement made by the Court in its "opinion and order" - "In fact, the Stacks similarly advocated their own interests during the mediation by rejecting Menard's settlement offers. Moreover, mediation and litigation - even dispositive motions such as motions for summary judgment - typically run parallel to each other." - To the Plaintiffs it represents a gross over-statement by the Court to depict multiple "offers" made by the Defendant when in reality we are being asked to pay for ninety minutes of wasted time, mostly spent listening to "mediation instructions" by the Mediator and waiting in muted silence while the Defendant and "authorized person" to put forward a miserly offer of \$1,000 more than their opening offer of \$5,000. - This was against our opening demand of \$125,000 which we'd reduced by \$10,000 after their initial \$5,000 offer. - Then to have their counter offer of \$1,000 withdrawn following another lengthy wait in silence certainly gives credence to our accusation of a "sabotaged mediation" showing "bad faith" by the Defendant - all-in-all brought about by their strategic timing of their filing of "Motion For Summary Judgment" - Is it legal, yes - but from an ethics standpoint, it smells like spoiled fish.

Since the "typically run parallel to each other" rationale has been applied by the Court, then Plaintiffs sincerely belief the same reasoning should apply to them. In that regard we have elected to run parallel "appeals", the formal one to the Court and a less formal

one "running parallel" to the "court of public opinion", in hopes of yet securing legal representation as we move forward with our case.

(11). Photographs considered to be evidence of causation, and manufacturer's "statement of advisability" concerning use of transition strips:

- **Affidavit Exhibit No. 1 (b)** - Plaintiffs' annotated photograph, taken on November 8, 2018 by son, Michael Stack, of "slight buckle" site discovered by Plaintiff James Stack within five minutes after Plaintiff Leona Stack November 7, 2018 trip-fall incident at Menards of Mishawaka, IN. - Photo taking was also witnessed by Plaintiff, James Stack. A matching non-annotated (clean copy) accompanies annotated photo.

- **Leona Stack Interrogatory Exhibit No. 3 (B)** - Plaintiffs' annotated photograph, taken on November 8, 2018 by son, Michael Stack, of "close-up" of "slight buckle" site. - Photo taking was also witnessed by Plaintiff, James Stack. - A matching non-annotated (clean copy) accompanies annotated photo.

- **James Stack Interrogatory Exhibit No. 3 (a)** - Plaintiffs' annotated photograph, taken on November 8, 2018 by son, Michael Stack, of "recessed" vinyl plank as installed in two of the Christmas Decoration aisles at November 7, 2018 date of Leona Stack trip-fall incident at Menards of Mishawaka, IN. - Photo taking was also witnessed by Plaintiff, James Stack. A matching non-annotated (clean copy) accompanies annotated photo.

Unadulterated photograph of "safety hazard warning" pylon that had been hastily placed, within 24 hours of Leona Stack's trip-fall incident on November 7, 2018. Photo is of misplaced (wrong aisle) pylon at another "recessed" vinyl plank aisle adjacent to the aisle where trip-fall actually took place. - Photo by son of Plaintiffs, Michael Stack, taken on afternoon of November 8, 2018; and witnessed by Plaintiff, James Stack.

- Annotated photograph taken by Plaintiff, James Stack cell phone, on October 14, 2019. Photo indicates consistency in Menards of Mishawaka, IN. negligent use and installation of "recessed" vinyl plank during holiday season.

- Copy of E-Mail dated November 18, 2019 from Plaintiff, James Stack, and directed to Ms. Jane Callies, Counsel for Defendant Menard, Inc. - E-Mail indicates that attachment of an "audio-visual" taken by son Michael Stack on November 8, 2018 is included. - Plaintiff directs Ms. Callies to include the audio-visual as a part of Plaintiff Leona Stack response to

her Interrogatory question "No. 3."

- Copy of Internet obtained "Floor Trim, Floor Reducer" ad from Flooring Reducers From Flooring Me.com - Plaintiff James Stack has underlined - *A floor reducer essentially reduces' the tripping hazard that is posed by a taller, unfinished selection of flooring.* (Floor reducers such as "transition strips" are sold in the same Menards store where Leona Stack suffered her fall - Flooring Dept. being within 50 yards of where the trip-fall incident happened. - **MENARDS NEGLECTED TO TAKE THIS SAFETY MEASURE AS A POSSIBLE MEANS OF PROTECTING THEIR CUSTOMER.**

WHILE ATTENDING TO A WIFE WHO WAS SUFFERING SEVERE PAIN IMMEDIATELY AFTER HER TRIP-FALL, THENCE TO OBTAIN IN-STORE ASSISTANCE, THENCE TO EXPEDITE HER TRANSFER TO A LOCAL HOSPITAL, THENCE TO SPEND APPROXIMATELY SEVEN HOURS WITH HER IN EMERGENCY BEFORE HER BEING ADMITTED AT 10:00 PM THAT NIGHT, THENCE TO SPEND THE WHOLE NIGHT WITH HER IN THE HOSPITAL, ALL WITHOUT THE KNOWLEDGE OF HOW TO USE THE CAMERA FUNCTION OF THEIR OWN CELL PHONE, - PLAINTIFFS CONSIDER THEMSELVES FORTUNATE TO HAVE BEEN ABLE TO CONTACT THEIR SON AND ARRANGE FOR PHOTOS TO BE TAKEN AT MENARDS WITHIN 24 HOURS OF THE INCIDENT. - (Photos were taken "just in case" what Store Management personnel advised Plaintiffs within a few minutes after the trip-fall incident that, "several security cameras were in the store, and that chances were that one had captured her fall" proved to be untrue, as evidenced by response in 'Question No. 4' of Defendant Interrogatories, "camera did not record her fall.")

HOW BETTER TO EXPLAIN TO A JURY HOW THE "TRIP FALL" HAPPENED BUT TO SHOW THEM A DIAGRAM AND OR PHOTOS RELATING TO THE INCIDENT. - PLAINTIFFS NOW VIEW THE COURT "OPINION" RENDERED UNDER TOPICAL HEADING "PHOTOGRAPHS" ON PAGE 11 OF THEIR REPORT. - I.E. - "The photographs Mrs. Stack relies upon cannot be considered evidence of causation either. After all, the Stacks admit that the photographs were taken the day after Mrs. Stack's fall and the record includes nothing to account for any changes to the flooring as a result of Mrs. Stack's fall or in the approximately 24 hours between the time of her fall and the photographs." - PLAINTIFFS CONSIDER THIS OPINION TO BE BIASED, WITHOUT MERIT, AND NON-DISCLOSING OF FACTS THAT ARE PLAIN AS A NOSE ON ONE'S FACE, OR AS THE PHOTOGRAPHS HAVE FACTUALLY RECORDED. - TO WITHHOLD THEM FROM A JURY AS "INADMISSABLE" WOULD DO MUCH HARM TO THE IDEA OF "JUSTICE" AS IT STILL EXISTS WITHIN THE NORMS AND IDEALS PRACTICED BY

THE PLAINTIFFS, LEONA AND JAMES STACK.

Case No. 1:21-cv-00019-JHE Document 190 Filed 03/29/21 Page 1 of 1

Plaintiffs Leona and James Stack do not feel contempt with the Court. - What we do feel is bitter disappointment with the direction in which our case has gone.

CONCLUSION

Plaintiffs Leona and James Stack do not feel contempt with the Court. - What we do feel is bitter disappointment with the direction in which our case has gone. The seemingly cruel treatment our case has received in the Court's "Opinion and Order" of 25 March, 2021, particularly after the latest "teleconference" of February 18th, 2021 during which a trial date was set along with several other pertinent response dates, only again to have all our hopes thrashed. - Those "dates" were followed that same day with ORDER SETTING TRIAL DATE AND FINAL PRETRIAL CONFERENCE, AND WITH REFERENCE TO CONDUCT OF TRIAL from the Court. Question: What influenced the Court so as to abruptly go from "trial date setting" to "dismissal" of our case in a short period of less than 40 days?

Legal "machinations" by the Defendant have become as much a part of this case that they seem to number only slightly less than the number of "cites" by them, and now the Court, to previous court cases and legal precedent setting events that now number close to fifty. - Who's to say that the unusual circumstances surrounding our case might make it eligible to become in itself a "precedent" setting event? - Hopefully, we are not now facing another "machination" to deny us our "day in court."

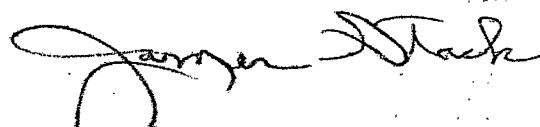
The whole crux of our case, the reason for Plaintiffs Leona and James Stack having to suffer through inexplicably long periods of delay and uncertainty before being doomed to "dismissal", is that Plaintiff Leona "did not see what caused her to trip and fall, nor could identify same." - To that false accusation we can only respond - How can you completely identify "something" when it has partially been hidden from your view? - Or, when you never traveled its surface (walked on the "vinyl plank"), but only fell upon it after having tripped on its partially hidden ("recessed") edge?

We trust that the Court will carefully review the evidence re-submitted and better defined by the Plaintiffs. - We also pray the Court will reverse its "Opinion and Order" of March 29, 2021 and reinstate the dates as previously ordered following the "teleconference" of Feb. 18, 2021. - That not being possible we then expect, especially since the Court has not dismissed our case or ruled against us on the issue of Summary Judgment as being "with prejudice", to be able to move on with our appeal to a higher court, notwithstanding to a sympathetic American public.

Respectfully,



Leona Stack, Plaintiff pro se



James Stack, Plaintiff pro se

Filed with the below, and forwarded via certified U.S. Mail on this 8th day of April, 2021:

Hon. Michael G. Gotsch, Sr.
United States Magistrate Judge
United States District Court
Northern District of Indiana
South Bend Division
204 South Main Street
South Bend, IN. 46601

Ms. Jane Callies, Attorney
9801 Connecticut Dr.
Crown Point, IN 46307

Encl. to Court: Photo Exhibits Nos. 1 (b), 3 (B), 3 (a),
Unadulterated "photo of safety hazard warning"
Annotated October 14, 2019 photo
Copy of E-Mail dated November 18, 2019 to Jane Callies
Copy of Internet obtained "Floor Reducer" ad relating to transition strips.

STATEMENT OF THE CASE (Addendum)

As to **Question No. 8** of *Petitioners* Leona and James Stack, "Questions Presented", regarding the possibility of court decisions by the **United States Court of Appeals For The Seventh Circuit** and the **United States District Court of Northern District of Indiana, South Bend Division** - That their "orders" and "opinions" might have been tainted with the prejudice that accompanies the "special challenges" offered by the fact the current *petitioners* have represented themselves *pro se* during the last thirty-six plus months of this matter. Further, that a concerted effort to deny "due process" by way of "trial by jury" being sought by *Plaintiff-Appellant-Petitioners* Leona and James Stack might have occurred during the same time period.

Undoubtedly, the Defendant's Counsel will attack this "question" as being "speculative" and without sufficient evidence as to sustain this "conjecture". They would be correct in their assessment; however, the denial of a constitutional right so fundamental as to what is shown under this "petition for writ", **Constitutional and Statutory Provisions Involved**, merits at least consideration. *Petitioner*, James Stack (currently acting as his wife, Leona's, designated **durable power of attorney** representative) finds it more than coincidental that the following principals in this matter are graduates from the same University of Notre Dame School of Law:

1. The first attorney contacted, who voluntarily withdrew from the "claim" with no lien attached.
2. The second attorney contacted, per recommendation of "Attorney No. 1", who also voluntarily withdrew from *Plaintiffs* "lawsuit" originally filed with **St. Joseph Superior Circuit Court (St. Joseph County State of Indiana)**, a later transfer to **United States District Court of Northern Indiana, South Bend Division**. - No lien attached. This attorney was formerly active with Notre Dame's Alumni Club.
3. The Magistrate Judge of the **United States District Court of Northern Indiana, South Bend Division**, who'd not ruled against us in his **Order And Opinion** of March 25, 2021 by designating "**With Prejudice**", thereby leaving the "door open" for *Plaintiffs* to "appeal".
4. The Mediator of the failed, and *Plaintiffs* alleged "bad faith", **Mediation** of July 3, 2020, who failed to "follow thru" in his pursuit of payment of a contractual fee which then *Plaintiffs* Leona and James Stack had sought to negotiate payment thereof.
5. The first listed judge on - **Affirmation of Final Judgment** and both **Denials** from **Petition For Panel Rehearing** and **Petition for Panel Rehearing En Banc** of the United

States Court of Appeals For The Seventh Circuit

6. Out of the nine (9) failed remaining attempts made by the current *Petitioners* for this "writ" to secure legal representation, two were local attorneys who had graduated from the University of Notre Dame School of Law.

Fifty percent of the legal people either directly connected with the case, or contacted in an attempt to find legal representation were graduated from a university which I, James Stack, also attended for three semesters in the mid 1950s. - I sincerely hope that I'm wrong in my interpretation of "coincidence" as it relates to Notre Dame; however, I suspect a deep loyalty by its School of Law graduates to its Athletic programs might have outweighed its unbiased opinions in this matter.

(From a personal standpoint, I have nothing but respect for that fine institution, albeit that in many of my writings I have been critical of the Notre Dame's Athletic Department in their methods of administrating their football program, and their sacrifice of "independence" to the media, and to their affiliation with the former BCS and current College Football Playoff Company. It's largely because of my leaning of "logic" and "ethics" that I, James Stack, am enabled by them to continue the fight for equality and justice both in the sports world and in the incidence of this "petitioning" the Supreme Court.)



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REASONS FOR GRANTING THE PETITION

The University of Chicago Law Review with which courts approach the procedural treatment question.

"B. Procedural Due Process Rights of Pro Se Civil Litigants Pro se litigants deserve, of course, the minimum due process rights to which all other litigants are entitled. The most significant of these rights is an opportunity to be heard, "granted at a meaningful time and in a meaningful manner." "1 ' Other minimum due process protections include the requirement of adequate notice, the right to a neutral and detached decision maker, the right to hire counsel, the right to present evidence and confront and cross-examine witnesses, and the right not to be subjected to the jurisdiction or laws of a forum with which one has no significant contacts. 02 As the Court noted in *Logan v. Zimmerman Brush Co.*, however, not "every civil litigant [is entitled] to a hearing on the merits in every case." "0 3 The Court has maintained that "the very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." " 0 Due process is not "unrelated to time, place and circumstances," but rather is "flexible and calls for such procedural protections as the particular situation demands.' "

Moreover, in the opinion of the *Petitioners* Leona and James Stack, the repeated denial of "due process" to us by the various courts heretofore mentioned continues to erode what waning years remain of the constitutional fundamental of "the pursuit of happiness" sought by those of our generation; to retire peacefully with the knowledge that we've earned that reward through our various personal accomplishments, and by abiding by the laws of justice prescribed by The Constitution of The United States of America.

We are not long in remaining years nor do we possess the financial means to secure legal aid from those who would research appellate court history in order to be able to cite court decisions favorable to our cause. We are able only to present the facts and evidence incorporated with this **Petition For Writ of Certiorari** that are in disagreement with previous courts' "construals", "orders", "misrepresentations", and "omissions", namely the "Question(s) Presented" Section. We are very concerned that what began back in November of 2018 as a straight forward claim for restitution for injuries and subsequent damages suffered by a "trip-fall" incident has escalated into being possibly being ruled upon by a Supreme Court of The United States, who themselves are currently under assault with the politicization of issues which have less to do with "constitutionality" than

this fundamental issue of "denial of due process."

Albeit being endangered by the challenges of *pro se* representation, our small voice needs to resound as a reminder of the promises of our Constitution. Our Petition For Writ of Certiorari offers a brief respite, yet more constitutionally important issue to the American "silenced majority of underdogs", during which The Supreme Court can demonstrate to the citizenry over which it resides that faith in the justice implied by The Constitution of The United States has again been affirmed.

Enclosed, as part of this "reason for granting", are examples of the current "hypocrisy" which currently has replaced the "ethics and common sense" of justice by which over two-thirds of our citizens have religiously adhered to. Signed by different attorneys for the Defendant, and originated over an approximate eight month period, both deal with **Affirmative Defenses** ending with "Jury Demand as to all issues herein." The second filing of February 18, 2020 was followed approximately twenty weeks later by the Defendant's **Motion For Summary Judgment**. That "motion" effectively negated any possibility of any "trial by jury" commonly sought for by the plaintiffs. This "negation" has resulted in yet another "denial" - that we've not been able to present to a jury the consequences of Leona Stack's trip-fall that have been endured by both wife and husband, James Stack. These need be addressed by whatever court or settlement process decided upon by The Supreme Court. We present them now as an indexed "before and after" enclosure.

Lastly, the enclosed and indexed copy of a letter from The South Bend Clinic & *SurgiCenter* represents the beginning of a sad culmination of a thoroughly frustrating and unjust three and one-half year trek through the various courts of law. I, Petitioner James Stack, now stand alone praying that a favorable ruling by the highest court in the land comes our way in order that I might provide future security and care for a beloved one who, while yet recalling the details of her "trip-fall incident" of November 7, 2018, no longer has the short term memory capacity to understand why, or if, her remaining days will be "Dr. Jekyll or Mr. Hyde" days.

REASONS FOR GRANTING THE PETITION (Index and Enclosures)

INDEX:

- 1. Defendant's first "Jury Demand" submission by Bridgett J. Repay, Attorney of KOPKA PINKUS DOLIN PC (date unspecified) accompanying **Affirmative Defenses** in response to initial March 22, 2019 **Complaint for Damages** by Plaintiffs, Leona and James Stack filed with **St. Joseph Superior/Circuit Court**, 71D05-1903-CT-000106.
- 2. Defendant's second "Jury Demand" submission by Jane Callies, Attorney of KOPKA PINKUS DOLIN PC, filed February 18, 2020 accompanying **Affirmative Defenses** in response to amended January 29, 2020 **Complaint for Damages** by Plaintiffs, Leona and James Stack filed with **United States District Court Northern Indiana District, South Bend Division**, 3:19-cv-00310-MGG.
- 3. Listing of "Consequences" resulting from Leona Stack "trip-fall incident" of November 7, 2018.
- 4. The South Bend Clinic & *SurgiCenter* letter of February 24, 2021 "Exam Report".

LISTING OF CONSEQUENCES RESULTING FROM LEONA STACK 11-07-2018 TRIP FALL

- A. Extreme initial pain following the trip-fall incident; pain during the initial recovery period and during home therapy; pain during doctor prescribed professional therapy.**
- B. Enduring pain throughout the lengthy period since the incident which radiates throughout her lower back and extremities - aggravated by "a change in gait" as recognized by South Bend Orthopedics, Dr. Tyler McGregor (who prescribed the additional therapy).**
- C. Suffering extreme loss of confidence in her ability to stride normally without the support of walker or cane - leading to her 'change of gait' with a 'right lean' so as to anticipate 'tripping obstacles' in her path.**
- D. Suffering the loss of independence of being able to drive her 22 year old vehicle to go shopping, to hair stylist, to market, etc. - Although vehicle is titled to her and she has valid driver's license, Leona Stack no longer drives, nor has since trip-fall incident of Nov. 7, 2018 owing to weakness and lack of dexterity on right hip area and leg.**
- E. Suffering the inability to fully extend, without pain in elbow area, her right arm to reach into overhead cupboards.**
- F. Suffering the inability to walk (even with a cane) any lengthy distance without pain in her legs; to stand for lengthy periods; to ascend or descend stairs to her downstairs laundry successive times without pain.**
- G. Suffering the inability to walk to sporting events (granddaughter's softball and basketball games) over discomforting uneven ground, or other than 'front row' bleacher seats, without fear of losing balance.**
- H. Suffering the 'indignity' of constantly seeking 'handicapped facilities' if attending Notre Dame Women's basketball games, i.e. availability of close in 'handicap parking' or 'drop off zone' for husband to pick up; accessibility and availability of 'handicap seating.'**
- I. Suffering the general 'loss of independence' in being able to do 'the little things for herself.' - Dislikes the fact that she must depend on husband, James Stack, to assist her in doing, or to do things she previously was able to do for herself.**
- J. Suffering the anguish of the 'delays' and the uncertainty of where 'all of this is going'**

in regard to settlement - particularly in regard to the implication by the Defendant that she (Leona) was mostly to blame for her trip-fall incident - whereas no evidence has come forth to support their contention, only denial followed by deferring silence and defensive 'legal' delaying tactics.

Specifically, for the loss of spousal services, Plaintiff James Stack, husband of Leona has experienced:

A. The loss of opportunity to seek gainful, part or sometimes full time, employment needed to offset increases in cost of living and extraordinary expense related to household needs. - It was an option he enjoyed, and that was prevalent since his early retirement on Jan. 1, 1999 at age 61, and when he would take jobs as dictated by family finances. - Since the Leona Stack trip-fall incident of Nov. 7, 2018, practically all of his time is devoted to assisting his wife with her household duties and driving her to errands, medical appointments, etc. - His fear in leaving Leona by herself is that she might again injure herself because of a pain induced or 'change of gait' induced fall - her confidence level so lowered by the negligence of Monard, Inc. to properly maintain their Wickeska, IL store environment in regard to the safety protection of their customer. - This situation with James Stack, in all likelihood, will continue into the future. - It is a situation somewhat mitigated by his writing skills as a 'part-time' author and website creator, however, that has proven to be financially non productive to date.

B. The loss of opportunity to have some type of knee surgery, or total knee replacement, on painful knees that cause James to walk with a limp. - Why? - Because of the strong belief in working years taken sixty-two (62) years ago that he needs to be with Leona 'thru sickness and health' - when she needs care more than he, and would be severely restricted as to aiding her husband during his surgical recovery period.

C. The loss of the opportunity to enjoy the spontaneity and pleasure of the sexual encounter. - Albeit, our times of intercourse were on the wane, we were still able to perform without the aid of drugs prior to Leona's trip-fall incident. - Discomfort in her lower extremities, and James' concern with 'pushing the issue' to further cause her discomfort has virtually eliminated the 'opportunity' - most certainly the 'spontaneity'.

D. For the disagreements and arguments relating to a husband's (James Stack) having to temporarily learn household duties normally performed by spouse, Leona, i.e. laundry, grocery shopping, cooking. - Albeit cooking has, for James, now become an enjoyable pastime, it does take time away from his 'reading' and 'writing' hobbies. - He does nearly

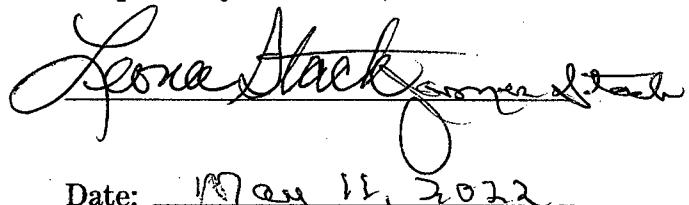
50% of what his spouse formerly did in regard to food preparation prior to her trip-fall incident of Nov. 7, 2018.

E. In general, for the loss of 'shared companionship' in doing recreational activities formerly enjoyed before Leona's trip-fall incident. - James and Leona Stack did most everything together with a sense of moderation and frugality. It becomes increasingly difficult to continue so - due solely to the negligence of Menard, Inc., which continues thru this day.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Leonie Stack". The signature is fluid and cursive, with "Leonie" on the top line and "Stack" on the bottom line, with a small "Esq." written to the right of "Stack".

Date: May 11, 2022

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APPENDIX A: (Page 2)

OPINIONS BELOW
Cause No. 3:19-cv-310-MGG, ORDER SETTING TRIAL DATE AND FINAL PRETRIAL
CONFERENCE, AND WITH REFERENCE TO CONDUCT OF TRIAL filed February 18, 2021 by
United States District Court Northern District of Indiana, South Bend Division – (Cross
reference with “Question(s) Presented”; Question Nos. 5 and 6) AT 2A
CONSTITUTIONAL AND STATUTORY

Case No. 21-1628, ORDER, “On consideration of the petition for rehearing”; dated December 16, 2021 by United States Court of Appeals For The Seventh Circuit, Chicago, IL. – (Cross reference with “Question(s) Presented”, Question No. 2). REASONS FOR GRANTING

Case No. 21-1628, ORDER, on APPELLANTS PETITION FOR EN BANC PANEL REHEARING; dated January 10, 2022 by United States Court of Appeals For The Seventh Circuit, Chicago, IL. – (Cross reference with “Question(s) Presented”, Question No. 1).

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Case No. 21-1628, ORDER, “On consideration of the petition for rehearing”, dated December 16, 2021 by United States Court of Appeals For The Seventh Circuit, Chicago, IL – (Cross reference with “Question(s) Presented”, Question No. 2).

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